IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

LOUIS J. CAPUTO, SR., Plaintiff,	:	CIVIL ACTION
v.	:	NO. 98-5542
UNITED STATES HEALTH CARE SYSTEMS OF PA, t/a or d/b/a AETNA U.S. HEALTHCARE, INC., UNITED STATES HEALTH CARE SYSTEMS, INC., U.S. HEALTHCARE, INC., and JOSE R. MONASTERIO, M.D., Defendant.	:	

MEMORANDUM

R.F. KELLY, J. NOVEMBER 23, 1998

Louis J. Caputo, Sr. ("Plaintiff"), originally brought this action in the Court of Common Pleas of Chester County against Jose R. Monasterio, M.D. ("Dr. Monasterio"), and U.S. Healthcare Systems of Pennsylvania, t/a or d/b/a Aetna U.S. Healthcare Inc., United States Health Care Systems, Inc., U.S. Healthcare, Inc. ("AUSHC" and collectively "Defendants"). AUSHC removed the action claiming this Court has "original jurisdiction" because Plaintiff's claims "arise under" the Medicare Act. 42 U.S.C. § 1395 et seq. Presently before the Court is AUSHC's Motion to Dismiss Plaintiff's Complaint for failure to exhaust administrative remedies. Rather than respond to the Motion to Dismiss, Plaintiff filed an Answer to Defendant's Removal of Civil Action and Motion to Remand to Court of Common Pleas of Chester County. For the reasons that follow,

AUSHC's Motion to Dismiss is denied and Plaintiff's Motion to Remand is granted.

Originally, AUSHC removed this action alleging that Plaintiff's claims "arise under," and therefore, are pre-empted by the Medicare Act. 42 U.S.C. § 1395 et seq. AUSHC now claims that Plaintiff's Complaint must be dismissed for failure to exhaust administrative remedies pursuant to the Medicare Act. Id. To the contrary, Plaintiff contends that his claims do not arise under the Medicare Act, but rather arise under the Employee Retirement Income Security Act of 1974 ("ERISA"), and furthermore because they are outside the scope of ERISA's civil enforcement provision, the matter must be remanded.

I. STANDARD.

Removal of a matter over which the district court has "original jurisdiction" is proper. 28 U.S.C. § 1441. District courts have "original jurisdiction" over matters "arising under the Constitution, laws, or treaties of the United States." 28 U.S.C. § 1331. Summary remand of a removed action is appropriate if federal subject matter jurisdiction is lacking. 28 U.S.C. § 1447(c).

The "well-pleaded complaint rule" requires a federal claim to appear on the face of Plaintiff's complaint prior to removal. Joyce v. RJR Nabisco Holdings Corp., 126 F.3d 166, 171 (3d Cir. 1997); Dukes v. U.S. Healthcare, Inc., 57 F.3d 350, 354

(3d Cir. 1995) cert. denied 516 U.S. 1009, 116 S.Ct. 564 (1995). "Complete pre-emption" is an exception to the "well-pleaded complaint rule" which allows a cause of action to be removed despite the absence of a federal question on the face of Plaintiff's well-pleaded complaint. Dukes, 57 F.3d at 353. "This doctrine holds that the preemptive force of a statute can be so extraordinary that it converts an ordinary state common law complaint into one stating a federal cause of action." Berman v. Abington Radiology Assocs., Inc., 1997 WL 534804 at *3 (E.D. Pa. Aug. 14, 1997)(citing Dukes, 57 F.3d at 353). In order for the doctrine of complete pre-emption to apply, the federal statute at issue must (1) vindicate the same interest as plaintiff's cause of action; and (2) contain affirmative evidence of congressional intent for complete pre-emption to apply. Berman, 1997 WL 534804 at *3 (citing Allstate Ins. Co. v. The 65 Security Plan, 879 F.2d 90, 92 (3d Cir. 1989). "Complete pre-emption" allows removal without regard to the face of Plaintiff's well-pleaded complaint.

II. DISCUSSION.

The face of the complaint in question does not refer to federal law and therefore under ordinary circumstances Defendants could not remove. Here, Defendants removed contending that Plaintiff's state remedies have been completely pre-empted by the Medicare Act. To the contrary, Plaintiff claims that ERISA applies, but not complete pre-emption, and that under the "well

pleaded complaint rule" remand is appropriate. The issue presented is whether Plaintiff's claims are completely pre-empted by either the Medicare Act or ERISA.

A. The Medicare Act.

In Berman, a case factually similar to Plaintiff's, a Court of this district held that complete pre-emption did not apply because the Medicare Act did not vindicate the same interest as plaintiff's negligence claim. Berman, 1997 WL 534804 at *3. Following that analysis, I hold that the Medicare Act does not completely pre-empt Plaintiff's cause of action.

All claims to recover benefits "arising under" the Medicare Act must be brought pursuant to section 405(g). 42 U.S.C. § 405(h). Section 405(g) allows an individual to appeal a final decision of the Commissioner of Social Security to the district court within 60 days notice of such decision. 42 U.S.C. § 405(g). Thus, if Plaintiff's claims "arise under" the Medicare Act, removal was proper." Berman, 1997 WL 534804 at *3 (citing Ardary v. Aetna Health Plans of California, 98 F.3d 496, 499 n.7 (9th Cir. 1996, cert. denied, 117 S.Ct. 2408 (1997)).

Whether a claim "arises under" the Medicare Act and, therefore, completely pre-empts state law, is determined by either one of two tests developed by the United States Supreme Court. "First, a claim 'arises under' the Medicare Act if 'both the standing and the substantive basis for the presentation' of

the claim is the Act." Berman, 1997 WL 534804 at *3 (citing Heckler v. Ringer, 466 U.S. 602, 614-15 (1984)(citations omitted)). "Second, a claim 'arises under' the Medicare Act if it is 'inextricably intertwined' with a claim for Medicare benefits." Id. Plaintiff's claims do not meet either of these tests.

Plaintiff alleges that Defendants' negligence resulted in the amputation of the lower portion of his left leg. Negligence arises from state common law, neither standing nor the substantive basis for the presentation of a negligence claim is the Medicare Act. Berman, 1997 WL 534804 at *3 (citing Ardary, 98 F.3d at 499). Plaintiff's claims are not "inextricably intertwined" with a claim for Medicare benefits because Plaintiff is not seeking to recover Medicare benefits. Id. For these reasons, Plaintiff's claims do not "arise under" and are not completely pre-empted by the Medicare Act, thus, Defendant's Motion to Dismiss is denied. Because Plaintiff's complaint does not refer to the Medicare Act, removal on the basis of pre-emption was improper under the "well-pleaded complaint rule."

B. ERISA.

It is well settled that claims arising under ERISA's civil enforcement provision are completely preempted. Dukes, 57 F.3d at 354 (citing Metropolitan Life Ins. Co. v. Taylor, 481 U.S. 58, 64 (1987). Thus, claims within the scope of section 502

of ERISA are completely pre-empted, and removable, without reference to Plaintiff's complaint. Id. (citing Metropolitan Life, 481 U.S. at 66). All other ERISA claims arise under section 514(a) and are subject to the "well-pleaded complaint rule." Dukes, 57 F.3d at 355 (citing Franchise Tax Bd. v. Constr. Laborers Vacation Trust, 463 U.S. 1, 23-27 (1983). Thus, if Plaintiff's claims fall within the scope of section 502 they are completely pre-empted and removal was proper without regard to Plaintiff's Complaint, however, if they arise under section 514(a), the "well pleaded complaint rule" applies and removal was improper.

Section 502(a)(1)(B) states that a participant or beneficiary in a plan may bring a civil action "to recover benefits due to him under the terms of the plan, to enforce his rights under the terms of the plan, or to clarify his rights to future benefits under the terms of the plan." 29 U.S.C. § 1132(a)(1)(B). Medical malpractice and negligence claims which attack the quality of benefits provided are generally held to be outside the scope of section 502(a)(1)(B). Dukes, 57 F.3d at 356-57; Kapka v. Hornstein, 1997 WL 381762, at *1 (E.D.Pa. June 26, 1997); Hoyt v. Edge, 1997 WL 356324, at *3 (E.D.Pa. June 20, 1997)(ordering remand where plaintiff "claims not that his health plan failed to provide services, but that the services he did receive were inadequate and negligent"); Katlin v. Tremoglie,

1997 WL 548932, at *2 (E.D.Pa. Sept.3, 1997). To the contrary, claims which assert injury resulting from an administrative denial of benefits are within the scope of section 502(a)(1)(B). Dukes, 57 F.3d at 356 (assuming that removal jurisdiction would exist if the plaintiffs were alleging that the HMO's refused to provide the services to which membership entitled them); Bejuki v. Friends Hosp., 1998 WL 408818 at *1, (E.D.Pa. July 17, 1998)(remanding after plaintiff learned that her decedent's physician, rather than the HMO, was responsible for discharge).

As discussed above, Plaintiff alleges that Defendants' negligence resulted in the amputation of the lower portion of his left leg. Plaintiff's Complaint contains two counts of negligence, one against Dr. Monasterio and one against AUSHC. The complaint does not contain the word "ERISA" and there is no mention of Plaintiff's enrollment in an ERISA qualified employee welfare plan as defined in 29 U.S.C. S 1002(1).

Count II of Plaintiff's Complaint contains a reference to AUSHC placing profitability above the well-being of Plaintiff. Further, in his Answer, Plaintiff states that his "allegations are based on negligence in medical decisionary process occasioned by a cost-containment protocol from a for-profit HMO." Pl.'s Br. for Remand in Resp. to Def.'s Mot. to Dismiss. These vague references could be construed to infer that AUSHC somehow denied Plaintiff a benefit for monetary reasons and Plaintiff was

injured as a result. If so, Plaintiff's claim would be completely pre-empted.

Under the "well-pleaded complaint rule" Plaintiff must either assert a federal claim and face removal, or forgo a federal claim and remain in state court. From the face of the Complaint, this Court is unable to definitively determine if Plaintiff's claims are completely pre-empted by section 502 of ERISA. This Court is bound by the "well-pleaded complaint rule" and the face of Plaintiff's Complaint does not refer to ERISA, therefore, the case must be remanded. Should Plaintiff amend his Complaint to clearly state an ERISA claim, AUSHC may again remove this matter to federal court. Howard v. Sasson, 1995 WL 581960, at *3 (E.D.Pa. Oct.3, 1995)("Dukes cannot be evaded by artful pleading").

An Order follows.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

LOUIS J. CAPUTO, SR., Plaintiff,	:	CIVIL ACTION
v.	:	NO. 98-5542
UNITED STATES HEALTH CARE SYSTEMS OF PA, t/a or d/b/a AETNA U.S. HEALTHCARE, INC., UNITED STATES HEALTH CARE SYSTEMS, INC., U.S. HEALTHCARE, INC., and JOSE R. MONASTERIO, M.D., Defendant.	:	

ORDER

AND NOW, this 23rd day of November, 1998, upon consideration of Defendant's Motion to Dismiss Plaintiff's Complaint and Plaintiff's Answer to Defendant's Removal of Civil Action and Motion to Remand to Court of Common Pleas of Chester County, and Defendant's Response thereto, it is hereby ORDERED that Defendant's Motion to Dismiss is DENIED and Plaintiff's Motion to Remand is GRANTED. This matter is remanded to the Court of Common Pleas of Chester County.

BY THE COURT:

_____
Robert F. Kelly, J.